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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

YELLOWCAKE, INC., California  
corporation,  
  
Plaintiff,  
  
v.  
  
HYPHY MUSIC, INC.,  
  
Defendant.

**Case No.: 1:20-cv-00988-AWI-BAM**

**DECLARATION OF JOSE MARTINEZ  
IN SUPPORT OF  
DEFENDANT/COUNTERCLAIMANT'S  
EX PARTE APPLICATION FOR LEAVE  
TO SUPPLEMENT INITIAL  
DISCLOSURES AND RESPONSES TO  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

HYPHY MUSIC, INC.,  
  
Counterclaimant,  
  
v.  
  
YELLOWCAKE, INC.; COLONIZE  
MEDIA, INC; JOSE DAVID  
HERNANDEZ; and JESUS  
CHAVEZ SR,  
  
Counterdefendants.

DECLARATION OF JOSE MARTINEZ IN SUPPORT *EX PARTE*  
APPLICATION FOR LEAVE TO SUPPLEMENT

**DECLARATION OF JOSE MARTINEZ**

I, Jose Martinez, declare and state as follows:

1. I am an individual currently residing in Fresno, California, and am over 18 years of age. I am the owner and Chief Executive Officer of Defendant/Counterclaimant HYPHY MUSIC, INC., a California corporation (“Hyphy”), and am also personally named, as a defendant, in this action. I know all of the following facts of my own personal knowledge and, if called upon and sworn as a witness, could and would competently testify thereto.

2. Hyphy is a record label in the business of producing, distributing, and otherwise exploiting sound and audiovisual recordings, coupled with artwork, in the U.S. Plaintiff/Counter-Defendant YELLOWCAKE, INC., a California corporation (“Yellowcake”) is a competing record label, and Counter-Defendant COLONIZE MEDIA, INC., a California corporation (“Colonize”), which is wholly owned and controlled by the same individuals who own Yellowcake, is Yellowcake’s distributor (collectively, “Counter-Defendants”). Counter-Defendant JESUS CHAVEZ, SR. (“Chavez”) is the lead singer of the Spanish-language musical group *Los Originales De San Juan* (the “Group”), which at all relevant times included band members Domingo Torres Flores (“Flores”) and Alfonso Vargas (“Vargas”).

3. On or about July 16, 2020, Yellowcake commenced this action for infringement against Hyphy. In its Complaint, Yellowcake alleges that it acquired all rights in the sound recordings contained in multiple albums (collectively, the “Los Originales Albums” or “Albums”) from Chavez, and Hyphy subsequently infringed such rights by distributing the Albums without authorization. However, Hyphy acquired rights in the Albums from the Group first, and that is why Hyphy was exploiting them when Yellowcake discovered such authorized use.

4. Additionally, I know that when Yellowcake first uploaded the Albums for distribution through Colonize, it did so using album cover art that Hyphy created when it first acquired rights in the Albums from the Group, and thus owned (the

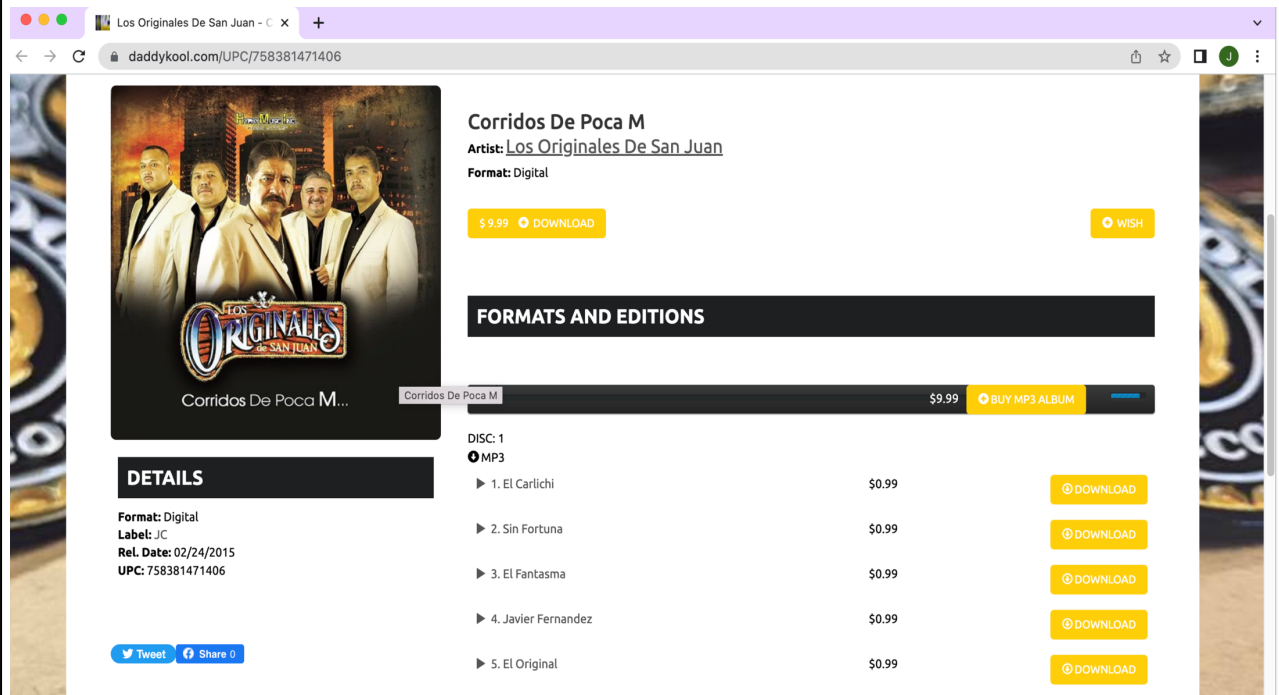
1 “Album Artwork”). Accordingly, when Hyphy answered Yellowcake’s Complaint  
2 and denied liability, it also brought a counterclaim for copyright infringement  
3 against Counter-Defendants.

4 5. Because I know Counter-Defendants at least initially uploaded the  
5 Albums with Hyphy-owned Album Artwork, I have been actively searching online  
6 for evidence of Counter-Defendants’ infringement of such Album Artwork for some  
7 time. This effort has, however, proved to be difficult because Counter-Defendants  
8 removed their prior use of such Album Artwork after Hyphy brought counterclaims  
9 for infringement of such rights against Counter-Defendants. I have therefore been  
10 forced to go to great lengths to try to find such evidence, including by hiring a  
11 digital forensic investigator.

12 6. Despite these difficulties, I made a breakthrough last Wednesday,  
13 October 5, 2022, when I discovered evidence of infringement via an obscure digital  
14 service provider called “Daddy Kool Records.” It appears that Counter-Defendants  
15 forgot to remove their prior infringing use of the Album Artwork from this website,  
16 which resulted in Hyphy’s discovery of evidence of infringement for the first time.  
17 Attached hereto as Exhibit “A” and incorporated herein by this reference are  
18 screenshots of the Album Artwork used without authorization by Yellowcake in its  
19 distribution of the Albums.

20 7. Below is a sampling of one such screenshot evidencing Counter-  
21 Defendants’ distribution of the Albums with the Album Artwork. I know that this is  
22 a screenshot of Counter-Defendants’ distribution of the Albums because the image  
23 shows that the “Label” is “JC” – which is a reference to Counter-Defendant Jesus  
24 Chavez, Sr., the lead singer of the Group now working with Hyphy and Yellowcake  
25 to distribute his works. As can be seen, though, the image clearly contains Hyphy’s  
26 name at the top.

27 ///



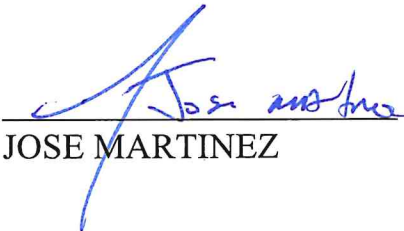
8. I am aware that, during the deposition of the person most knowledgeable for Colonize, Counter-Defendant Hernandez testified under oath that neither Yellowcake nor Hyphy uploaded any of the Albums with the Album Artwork because Kevin Berger (a principal of both Yellowcake and Colonize) “didn’t want anything to do with Hyphy Music’s artwork”, and Mr. Berger therefore requested that Counter-Defendants create “brand-new artworks”. As can be seen from the discovered evidence above, however, this is a provable lie.

9. The evidenced attached hereto as Exhibit “A” is definitive proof of Counter-Defendants’ infringement of Hyphy’s Album Artwork, and it must be included into the evidentiary record, along with recently executed Copyright Assignment Agreements between Hyphy and Flores and Vargas, respectively (the “Assignments”), which each have the effect of conveying rights in the Albums to Hyphy. Hyphy will therefore be severely prejudiced if it is unable to supplement its Initial Disclosures and Responses to Requests for Production with such evidence.

1 True and correct copies of the Assignment are enclosed herewith as Exhibit "B" and  
2 incorporated herein by this reference.

3 10. I understand that Hyphy's discovery of new evidence has come after  
4 the discovery cut-off date has passed. However, I am more than willing, on behalf of  
5 Hyphy, to agree to further, limited discovery, if any is needed in light of the  
6 supplemental evidence Hyphy seeks to include in the record. From my  
7 understanding, trial in this matter is not set to begin until June of 2023, which means  
8 that there is still plenty of time for Counter-Defendants to conduct any further  
9 discovery that they need before the parties submit motions for summary judgment  
10 and then begin preparation for trial.

11 I declare under penalty of perjury under the laws of the State of California  
12 that the foregoing is true and correct, and that this Declaration was executed on  
13 October 12, 2022, at Fresno, California.

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16 JOSE MARTINEZ  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a “Notice of Electronic Filing” automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: October 12, 2022

By: /s/ John Begakis  
John M. Begakis